RICHARD W. TAYLOR, LULA B. TAYLOR,
DERREL L. SMITH, and RAYMOND MENDOSA

IBLA 94-253 Decided October 11, 1996

Appeal from a decision by the California State Office, Bureau of Land Management, denying a small miner's exemption and declaring mining claims abandoned and void for failure to pay annual rental fees. CAMC 59017, CAMC 164055.

Reversed.

1. Mining Claims: Rental or Claim Maintenance Fees: Small Miner Exemption

The regulations promulgated to implement the Department of the Interior and Related Agencies Appropriations Act for Fiscal 1993, P.L. 102-381, 106 Stat. 1374 (1992), preclude an exemption for mining claims not held under a valid notice or plan of operations but do not require that a mineral claimant hold all claims under a valid notice or plan of operations to qualify. A claimant can seek and obtain an exemption for mining claims that are held under a valid notice or plan of operations and submit rental fees for the other claims.

APPEARANCES: Richard W. Taylor, Lula B. Taylor, Derrel L. Smith, and Raymond Mendosa, pro sese.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Richard W. Taylor, Lula B. Taylor, Derrel L. Smith, and Raymond Mendosa have appealed a December 23, 1993, decision issued by the California State Office, Bureau of Land Management (BLM), declaring the Golden Key #3 placer mining claim (CAMC 59017) and the KPTL #1 lode mining claim (CAMC 164055) abandoned and void for failure to either pay annual rental fees of $100 per claim for the 1993 and 1994 assessment years or obtain a small miner's exemption by August 31, 1993, as required by the Department of the Interior and Related Agencies Appropriations Act for Fiscal 1993 (1993 Appropriations Act), P.L. 102-381, 106 Stat. 1374 (1992).

BLM's decision acknowledged receiving exemption certification forms for the Golden Key #3, KPTL #1, Tingley's Ledge (CAMC 190404), and Triple T

(CAMC 231043) placer mining claims on August 30, 1993. The decision also noted that appellants had submitted rental fees for the Tingley's Ledge and Triple T claims. BLM stated that, according to its records:

> [T]he claimant's Plan of Operations has not been approved for the Tingley's Ledge placer (CAMC 190404) and the Triple T placer (CAMC 231043). However, the records do show that a Plan of Operations has been approved by the Bureau of Land Management's Folsom Resource Area Office for the Golden Key #3 placer (CAMC 59017) and the KPTL #1 lode (CAMC 164055).

BLM found that appellants did not qualify for the small miner's exemption because they had "failed to comply with the regulations under §3833.1-6(4) by not having all of their mining claims under either a valid Notice or a valid Plan of Operations." (Emphasis added.) BLM declared the Golden Key #3 and the KPTL #1 abandoned and void because rental fees had not been paid for those claims. By order dated February 28, 1994, the decision was stayed as to the Golden Key #3 and the KPTL #1 claims. 1/

Appellants raise a variety of arguments concerning the merits of their appeal. They contend that they "filed all necessary documents with sufficient time for BLM to respond to cure any defects," as BLM advised in publishing the final regulations governing claim rental fees at 58 FR 38186, 38195 (July 15, 1993) (Statement of Reasons at 1). They also assert they followed directions in a letter from BLM, dated August 10, 1993, and that, if its instructions were in error, the defects should be curable. They note that, although the regulations had been published in the Federal Register on July 15, 1993, the regulations were not enclosed or mentioned in BLM's August 10, 1993, letter. Appellants argue that, had they been correctly informed, they would have made rental payments for the two additional claims.

In addition, appellants note that under 43 CFR 3833.1-6(g) (1993) the rental paid for the Tingley's Ledge and Triple T claims satisfies the requirement to file notices of intent, and they argue that the Golden Key #3 and the KPTL #1 should qualify for the small miner's exemption. They state that operations on the Triple T were halted in mid-July 1993 in response to a directive from BLM, and they point out that the plan of operations for the Tingley's Ledge claim was the subject of a pending hearing to determine the position of the claim in relation to the boundary of the Merced River Wilderness Study Area, which will determine the applicable regulatory standards. See 43 CFR 3802.0-1, 3809.0-1; Richard W. Taylor, 119 IBLA 310 (1991), vacated and remanded sub nom. Taylor v. Lujan, No. CV-F-91-571 REC (E.D. Cal. Nov. 10, 1992), hearing ordered, Oct. 26, 1993.

1/ As explained in the order, appellants had sought a stay of "all actions" concerning the four claims, but only BLM's decision declaring the Golden Key #3 and the KPTL #1 claims abandoned and void is at issue on appeal.

They also argue that a plan of operations filed with BLM should qualify as a notice of intent to operate even though some or all of the operations cannot be initiated until the plan has been approved. Appellants further argue that the Omnibus Budget Reconciliation Act of 1993 (P.L. 103-66, 107 Stat. 312), enacted August 10, 1993, changed the law and all of their claims qualify for a waiver. They additionally contend that if the Tingley's Ledge and Triple T claims qualified for the exemption, the rental fees paid for those claims should be applied to the Golden Key #3 and the KPTL #1.

In relevant part, the 1993 Appropriations Act provided that:

> [F]or fiscal year 1993, for each unpatented mining claim, mill or tunnel site on federally owned lands, in lieu of the assessment work requirements contained in the Mining Law of 1872 (30 U.S.C. 28-28e), and the filing requirements contained in section 314 (a) and (c) of the Federal Land Policy and Management Act of 1976 (FLPMA) (43 U.S.C. 1744 (a) and (c)), each claimant shall, except as provided otherwise by this Act, pay a claim rental fee of $100 to the Secretary of the Interior or his designee on or before August 31, 1993 in order for the claimant to hold such unpatented mining claim, mill or tunnel site for the assessment year ending at noon on September 1, 1993 * * *.

P.L. 102-381, 106 Stat. 1374, 1378 (1992). A substantially identical provision required mineral claimants to pay, on or before August 31, 1993, a $100 rental fee to hold an unpatented mining claim, mill or tunnel site during the assessment year ending at noon on September 1, 1994. Id. The legislation provided that "failure to make the annual payment of the claim rental fee as required by this Act shall conclusively constitute an abandonment of the unpatented mining claim, mill or tunnel site by the claimant * * *." Id. at 1379.

The 1993 Appropriations Act allowed an exemption for claimant with 10 or fewer claims who is "producing under a valid notice or plan of operation not less than $1,500 and not more than $800,000 in gross revenues per year" or is "performing exploration work to disclose, expose, or otherwise make known possible valuable mineralization * * * under a valid notice or plan of operation; and * * * has less than ten acres of unreclaimed surface disturbance from such mining activity or such exploration work." Id. at 1379. Such a claimant "may elect to either pay the claim rental fee for such year or in lieu thereof do assessment work required by the Mining Law of 1872," meet the requirements of 43 U.S.C. § 1744(a) and (c) (1994), "and certify the performance of such assessment work to the Secretary by August 31, 1993." Id. An identical provision allows an exemption for the 1993-94 assessment year. Id. at 1378-79.

The record includes the exemption certificates filed by the appellants which were received by BLM August 30, 1993. BLM denied appellants

an exemption for the Golden Key #3 and the KPTL #1 claims because not all of their claims were under a notice or plan of operations. The issue presented by the appeal is: Do the 1993 Appropriations Act and Departmental regulations impose a requirement that a claimant holding 10 or fewer claims must have all of the claims under a notice or plan of operations, or can the claimant qualify for an exemption for those claims under a valid notice or plan of operations and pay rental fees for those which are not?

[1] The above quoted statutory language limits the small miner's exemption to claimants who are either producing or exploring under a valid notice or plan of operations. The regulations also require that, to qualify for the exemption, "[t]he mining claims shall be under * * * [o]ne or more Notices or approved Plans of Operations." 43 CFR 3833.1-6(a)(4) (1993). These provisions preclude an exemption for a mining claim if it is not held under a notice or plan of operations. However, they do not require that the miner seeking an exemption have all of the claims he holds under a notice or plan of operations to qualify for an exemption for those being held under a notice or plan of operations.

Several provisions of the regulations support this finding. One states that the 1993 Appropriations Act "requires an annual rental fee of $100 to be paid to the proper office of the Bureau of Land Management for each non-exempt mining claim, mill site, or tunnel site." 43 CFR 3833.0-3(e) (1993) (emphasis added). When promulgating the regulations, BLM explained that "[t]he term 'non-exempt' was added to paragraph (e) of this section to make it clear that the voiding of claims for failure to pay the fee does not apply to those claims that are exempt because of the small miner exemption." 58 FR 38186, 38188 (July 15, 1993). BLM clearly recognized that some mineral claimants with 10 or fewer claims would qualify for an exemption for some claims and fail to pay rental fees on others. See also 43 CFR 3833.1-6(a)(1) (1993). This circumstance could arise if a mineral claimant is conducting operations on one claim under an approved plan of operations and applying the expenditures to satisfy the assessment work requirements for contiguous claims or is undertaking work on other claims not requiring an approved plan of operations. See 43 CFR 3802.1-2, 3809.0-5(b), 3809.1-2 (1993). If the regulations required all claims to be held under a notice or plan of operations, all of the claims would be exempt or none of them would be.

Another regulation provides that if a deferment of assessment work is granted, "the claims are exempt from the rental fees for that assessment year." 43 CFR 3833.1-7(e) (1993). The deferment is available when there is no legal access to a claim. 43 CFR 3852.1 (1993). Without access, a claimant could not undertake activity on the claim for which a notice or plan of operations could be filed. The benefit of exempting claims from rental fees would be negated if the owner is denied a small miner's exemption and is required to pay rental fees on other claims due to the lack of a notice or plan of operations for the claims under the deferment. Similarly, claimants who have been denied access to their claims by the

National Park Service would be penalized by being unable to obtain a small miner's exemption for claims not subject to Park Service jurisdiction. See 43 CFR 3833.1-7(g) (1993). Even in this case, requiring all of the claims to be held under a notice or plan of operations would lead to the ironic result that the claims for which the claimants have obtained approved plans of operations are the claims deemed abandoned and void, while those not held under a notice or plan of operation are not.

We are aware that BLM responded to a question "whether it is possible for [a] claimant to pay the rental on two claims and take the exemption on eight" by saying that it could not be done "[b]ecause the language of the Act only allows for a choice between either paying the fee or doing the assessment work and meeting the filing requirements '* * * on such ten or fewer claims' * * *." 58 FR 38186, 38193 (July 15, 1993). In broader context the statute states that a mining claimant "may elect to either pay the claim rental fee for such year or in lieu thereof do assessment work required by the Mining Law of 1872 * * * and meet the requirements of 43 U.S.C. 1744(a) and (c) (1994) * * * on such ten or fewer claims." P.L. 102-381, 106 Stat. 1374, 1378 (1992) (emphasis added). The reading of the statute suggested by BLM is plausible, but not conclusive. The use of "fee" rather than "fees" suggests that Congress contemplated that a claimant with 10 or fewer claims could make a choice in regard to each claim. 2/ BLM could have incorporated its understanding of the statute into the promulgated regulations. As discussed above, several provisions of the regulations indicate that it did not, but instead understood that there would be cases in which claimants would obtain a small miner's exemption for less than all of their claims.

We conclude that the regulations allowed appellants, who hold fewer than 10 claims, to qualify for a small miner's exemption for the Golden Key #3 and the KPTL #1 while paying rental fees for the Tingley's Ledge and Triple T claims for which they did not have approved plans of operations, and that BLM erred in declaring the claims abandoned and void. We need not address the other arguments the appellants have raised. We note, however, that they confuse a notice filed under the surface management laws with a notice of intent to hold mining claims. Compare 43 CFR 3809.1-3 with 43 CFR 3833.2-2. We also note that the Omnibus Budget Reconciliation

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2/ We find nothing in the in 1993 Appropriations Act preventing a claimant holding 10 or fewer claims from paying rental on a portion of them and seeking an exemption on the balance. This act does not mandate that a claimant hold all of the claims as a group. Some of the claims may be miles apart, or even in another state. So long as the aggregate number of claims is 10 or fewer, each claim should be considered a separately. The regulation provides that "[f]ailure * * * to pay the rental fee * * * or file the [certified statement] * * * within the time periods prescribed therein shall be deemed conclusively to constitute abandonment of the mining claim * * *." 43 CFR 3833.4(a)(2) (1993) (emphasis added).

Act of 1993 applies by its terms "for the years 1994 through 1998" and did not amend the 1993 Appropriations Act. P.L. 103-66, 107 Stat. 312, 405 (1993).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the stay granted February 28, 1994, is dissolved, and the December 23, 1993, decision of the California State Office is reversed.

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R. W. Mullen
Administrative Judge

I concur:

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Franklin D. Arness
Administrative Judge